

3 FEBRUARY 1948

I N D E X
of
EXHIBITS

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
3021	3885		Sworn Deposition of HASHIMOTO, Gun		38722
3829	3886		Sworn Deposition of KAWABE, Terashiro		38722
3038	3887		Sworn Deposition of YAMAMOTO, Kumaichi		38728
			<u>MORNING RECESS</u>		38745

(Court adjourned at 1125 until Monday,
9 February 1948 at 0930.)

1 Tuesday, 3 February 1948

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting, with
13 the exception of: HONORABLE JUSTICE LORD PATRICK,
14 Member from the United Kingdom of Great Britain,
15 HONORABLE JUSTICE I. M. ZARYANOV, Member from the
16 USSR., and HONORABLE JUSTICE JARANILLA, Member from
17 the Republic of the Philippines, not sitting from
18 0930 to 1125.

19 For the Prosecution Section, same as before.

20 For the Defense Section, same as before.

21 - - -

22 (English to Japanese and Japanese
23 to English interpretation was made by the
24 Language Section, IMTFF.)
25

G
r
e
e
n
b
e
r
g
&
Y
e
l
d
e
n

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except SHIRATORI, who is represented by counsel. The
5 Sugamo prison surgeon certifies that he is ill and
6 unable to attend the trial today. The certificate
7 will be recorded and filed.

8 Mr. SHIMANOUCHI.

9 MR. SHIMANOUCHI: If the Court please, on
10 behalf of the accused OSHIMA I tender defense documents
11 3021 and 3029, the affidavits of the witnesses HASHI-
12 MOTO and KAWABE, and ask that they be received in
13 evidence. I understand the prosecution do not intend
14 to cross-examine these witnesses.

15 My reason for the tender of these two
16 documents is to reply to prosecution exhibits 3795-A,
17 3796-A and 3801-A presented by them in their rebuttal.
18 On the basis of these documents they, the prosecution,
19 made the following contentions: First, that about
20 January or February 1939 the Vice Chief of the Army
21 General Staff sent advice to Ambassador OSHIMA concern-
22 ing negotiations with Germany; second, that about that
23 time an exchange of telegrams kept secret from the
24 Foreign Office took place between the Army General
25 Staff office and Ambassador OSHIMA regarding treaty

1 negotiations; and, third, that it appears that about
2 April 1939 a draft treaty was proposed to the German
3 Foreign Office by the Japanese Army through the
4 Military Attache. It is to reply to these prosecution
5 submissions that I wish to tender these documents in
6 evidence.

7 THE PRESIDENT: Mr. Tavenner.

8 MR. TAVENNER: If the Tribunal please,
9 objection is made to the offer of both of these docu-
10 ments in evidence with the exception of the last
11 paragraph of each document. The tender of both of
12 these affidavits, it is submitted, is purely an effort
13 to bolster the testimony in chief of defense witness
14 USAMI at page 33,743 of the transcript and the testi-
15 mony of OSHIMA at pages 34,011 and 34,126 of the
16 transcript. The material in the last paragraph had
17 been put to the accused ITAGAKI but this accused did
18 not have an opportunity to answer. As to matters
19 other than what is contained in the last paragraph we
20 submit there has been full opportunity to answer
21 those matters and that they were answered -- attempted
22 to be answered -- in examinations in chief in the
23 defense phase.

24 MR. SHIMANOUCI: With regard to defense
25 document 3021, the first two paragraphs deal with the

1 witness' address and an outline of his career. In
2 paragraph 4 of his affidavit he states that an
3 exchange of telegrams between the Embassy in Germany
4 and the Japanese Army were technically impossible.
5 The point in paragraph 5 is what the prosecution con-
6 tended for the first time in the course of their
7 rebuttal in exhibit 3795-A.

8 THE PRESIDENT: By a majority the objections
9 are overruled and the documents admitted on the usual
10 terms.

11 CLERK OF THE COURT: Defense document 3021
12 will receive exhibit No. 3885; defense document 3029
13 will receive exhibit No. 3886.

14 (Whereupon, the documents above
15 referred to were marked defense exhibits
16 No. 3885 and No. 3886 respectively and
17 received in evidence.)

18 MR. SHIMANOCHI: I shall now read both of
19 these exhibits now admitted into evidence, omitting
20 the formal parts thereof.

21 Exhibit 3885: "I, HASHIMOTO, Gun state under
22 oath as follows:

23 "1. My present address is No. 456, 4 chome,
24 Kitazawa, Setagaya-ku, Tokyo.

25 "2. I was Chief of the Operational Division

1 of the General Staff from January 1938 until
2 September 1939. My rank at that time was, first,
3 Major General, and, later, Lieutenant General.

4 "3. As Chief of the Operational Division
5 I saw, of course, all the telegrams dispatched or
6 received by the General Staff, or exchanged between
7 the General Staff and Military Attaches or others
8 stationed in foreign countries.

9 "4. In Japan the Foreign Office, the War
10 Ministry and the Navy Ministry were using different
11 telegraphic codes each other. Therefore, it was im-
12 possible to make direct exchange of telegrams between
13 the General Staff and the Japanese Ambassador in
14 Germany, keeping such exchange secret from the Foreign
15 Office.

16 "5. In about January or February 1939 no
17 telegram was dispatched from the General Staff to
18 Ambassador OSHIMA stating that the prerogative of
19 diplomacy belonged to the Emperor, etc., as mentioned
20 in the exhibit No. 3795-A.

21 "6. In about January or February 1939 the
22 General Staff did not dispatch any telegram to
23 Ambassador OSHIMA concerning the question of strength-
24 ening the Anti-Comintern Pact, nor was no telegram
25 received by the General Staff from Ambassador OSHIMA.

1 "7. Military Attaches stationed in foreign
2 countries belonged directly to the General Staff.
3 Concerning the negotiations for a treaty between
4 Japan, Germany and Italy the General Staff never sent
5 in 1939 a draft of such a treaty by telegram to the
6 Japanese Military Attache in Germany.

7 "HASHIMOTO, Gun, 26 January 1948."
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 The document just read by me is exhibit No.
2 3885. I now read Court exhibit 3886:

3 "I, KAWABE, Torashiro, state under oath
4 as follows:

5 "1. My present address is Jindai-mura,
6 Kitatana-gun, Tokyo.

7 "2. I was stationed in Berlin from 1
8 December 1938 until February 1940 as Military Attache
9 of the Japanese Embassy. My rank at that time was
10 Major-General. Mr. OSHIMA was Ambassador from
11 October 1938 until October 1939.

12 "3. As in Japan the telegraphic codes of
13 the War Ministry, the Navy Ministry and the Foreign
14 Office were completely different from each other, it
15 was technically impossible for the General Staff to
16 send directly telegram to the Japanese Ambassadors
17 in foreign countries. Therefore, if telegrams were
18 exchanged between the General Staff and the Ambassa-
19 dor, it must have taken place through me as Military
20 Attache.

21 "4. In about January or February 1939 no
22 telegram was sent from the Deputy Chief of the General
23 Staff to Ambassador OSHIMA stating that the supreme
24 authority of diplomacy is rested in the Emperor, as
25 appears in exhibit No. 3795A.

1 "5. In about January or February 1939, no
2 telegrams were exchanged between Ambassador OSHIMA
3 and the General Staff, secretly from the Foreign
4 Office, concerning the question of strengthening the
5 Anti-Comintern Pact.

6 "6. With respect to negotiations for a Japan-
7 Germany-Italy treaty, I as the Military Attache never
8 submitted a draft of a treaty to the German Foreign
9 Office as mentioned in the exhibit No. 3801A. More-
10 over, during my sojourn in Berlin no draft of a
11 treaty was sent to me from the War Ministry or the
12 General Staff in Tokyo. Of course, I was never
13 ordered to submit such a draft to the German Foreign
14 Office.

15 "On this 23 day of January 1948 at Tokyo.

16 "KAWABE, Torashiro."

17 I should like to add, at this juncture, that
18 in connection with the Vice-Chief of the Army General
19 Staff who is said to have advised OSHIMA, as indi-
20 cated in prosecution exhibit 3795A, namely NAKAJIMA,
21 Tetsujo, I should like to state that this person is
22 now in Sumatra and is unable to appear before this
23 Tribunal to testify; and it is for that reason that
24 I submitted the affidavit of HASHIMOTO, Gur.
25

I now tender defense document 3038, the

1 affidavit of the witness YAMAMOTO, Kamaichi, and ask
2 that it be received into evidence. The reason for
3 my tender of this affidavit is as follows: I
4 understand that the prosecution does not desire to
5 cross-examine this witness. The prosecution in
6 their rebuttal phase offered in evidence prosecution
7 exhibits 3816A, 3819, 3821, 3822 and 3823A. All of
8 these are captured German documents. However, it
9 is stated in these exhibits that OSHIMA had urged
10 Japan to attack the Soviet Union. It is my desire
11 to offer counter evidence through this witness to
12 meet the contentions of the prosecution in this
13 regard.

14 THE PRESIDENT: Mr. Tavenner.

15 MR. TAVENNER: May it please the Tribunal,
16 objection is made to the introduction of this docu-
17 ment. The prosecution, through its exhibit 587,
18 transcript 6,562, showed that Ribbentrop contended
19 that an agreement had been made with OSHIMA by which
20 he was to influence the bringing of Japan into war
21 against Russia. The accused OSHIMA, in his testi-
22 mony in chief at page 34,026, denied that agreement
23 in considerable detail and further denied that he
24 endeavored in any manner to influence Japan in that
25 regard. The defense has had abundant opportunity in

1 its case in chief to introduce additional evidence on
2 that subject, and this is intended, we submit, to
3 bolster that testimony.

4 THE PRESIDENT: We do not want to hear you,
5 Mr. SHILANOUCHI. The objection is overruled and the
6 document is admitted on the usual terms.

7 CLERK OF THE COURT: Defense document 3038
8 will receive exhibit No. 3887.

9 (Whereupon, the document above
10 referred to was marked defense exhibit
11 No. 3887 and received in evidence.)

12 MR. SHILANOUCHI: I now read Court exhibit
13 3887, omitting the formal parts:

14 "I, YAMAMOTO, Kumaichi, state under oath as
15 follows:

16 "1. My present address is No. 9, 3-chome,
17 Shinjouma-machi, Setagaya-ku, Tokyo.

18 "2. I was appointed on 2 September 1940
19 the Director of the East-Asiatic Department of the
20 Foreign Office. I held concurrently the post of the
21 Director of the American Department since 28 October
22 1941, and was the Vice Foreign Minister from 18
23 September 1942 until 31 October of the year.

24 "3. As I was one of the highest responsible
25 officials of the Foreign Office during the above-

mentioned period, I saw all important telegrams sent
1 from Ambassador OSHIMA to the Foreign Office. It is
2 a fact that after the outbreak of the German-Russian
3 War several reports arrived from Ambassador OSHIMA
4 to the effect that Germany was desirous of a Japanese
5 attack on Soviet Russia. However, I do not remember
6 that OSHIMA ever advocated as his personal opinion
7 such an attack positively to the Japanese Government.

8 "On this 30 day of January 1948.

9 "At Tokyo.

10 "YAMAMOTO, Kumaichi."

11 Mr. Cunningham wishes to say a few words to
12 the Tribunal.

13 THE PRESIDENT: Mr. Cunningham.

14 MR. CUNNINGHAM: If the Tribunal please, this
15 completes the evidence which is prepared at this time.
16 These documents were presented now because they were
17 prepared. But we have a considerable volume of newly
18 discovered documents and evidence which are now on
19 their way from Washington which pertain to the mat-
20 ters introduced by the prosecution in their rebuttal
21 evidence. We have no desire to postpone or interrupt
22 these proceedings at this time, and that is why we
23 introduced our evidence now. But, if the evidence of
24 the other accused go long enough to receive and process
25

1 these documents which we have, we want to retain the
2 privilege of doing so. And we have other Japanese
3 documents and witnesses which are in the process
4 which are not ready at the present time.

5 I might say that nine months ago I submitted
6 interrogatories to General Marshall, and they are
7 now in the process of preparation in Washington and
8 should be here perhaps before the end of the taking
9 of the evidence.

10 Mr. Logan has a few words to say.

11 THE PRESIDENT: Do not conclude from our
12 silence that we are conceding anything to you.
13 Already we can truthfully say that no Court has
14 ever heard a defense more fully.

15 Mr. Logan.
16
17
18
19
20
21
22
23
24
25

W
h
e
n
&
M
o
r
s
e

1 MR. LOGAN: If the Tribunal please, last week
2 the defense requested a short adjournment to prepare
3 its surrebutal evidence, and pursuant to the Tribunal's
4 instructions that we should continue until we had a
5 breakdown we worked diligently to endeavor to get in
6 as much evidence as we could pursuant to your instruc-
7 tions. It would now appear that we have reached that
8 point and we still have evidence to be adduced on behalf
9 of some of the accused such as ITAGAKI, KOISO, TOJO,
10 and I believe further evidence on behalf of TOGO, and
11 also a certain amount of evidence on the general phase
12 which did not close until last week. And there also
13 was under discussion the consideration of some of the
14 defense attorneys of the presentation of evidence in
15 mitigation.

16 THE PRESIDENT: As you are speaking I am look-
17 ing at an order of proof on behalf of SHIRATORI. I would
18 like to complete that first.

19 MR. LOGAN: I understand that is to be with-
20 drawn, if the Tribunal please.

21 THE PRESIDENT: Well, the counsel responsible
22 should have had the courtesy of telling me that.

23 MR. LOGAN: Well, I know nothing of where he
24 is, if the Tribunal please, other than I don't believe
25 he knew the termination was coming so soon this morning.

1 THE PRESIDENT: Well, if he didn't know it
2 was coming on so soon I don't know what we could be
3 expected to know.

4 MR. LOGAN: Mr. Tavenner just advised me that
5 the prosecution was told last evening that that order
6 of proof was to be withdrawn.

7 THE PRESIDENT: Apparently it is unnecessary
8 to tell the Court. They can come in here and waste
9 their time. We were told that you had about sixty
10 documents and twenty-six witnesses. I think already
11 we have covered nearly sixty documents and some of the
12 witnesses have been heard by affidavit.

13 MR. LOGAN: Well, the point I am trying to
14 make, if the Tribunal please, is that we have done our
15 best to comply with the Tribunal's order that we should
16 proceed until the breakdown has occurred, and it has
17 now occurred and we are asking for two or three days
18 adjournment until we can get the balance of our evidence
19 in shape so that it can be presented **shortly**.

20 I might also request, if it meets with the
21 Tribunal's approval, that we have a Chambers hearing
22 to discuss this question of mitigation as many attorneys
23 are **in** doubt as to just what evidence the Tribunal
24 would consider to be mitigation evidence and whether
25 or not by the offering of such evidence it would be an

1 implied admission of guilt on the part of any accused
2 under the practice which the Tribunal has adopted.

3 THE PRESIDENT: It excludes character evidence
4 but would include such things as superior orders. I
5 can say no more about that. I don't know what was
6 intended. I was away in Australia when it was decided
7 upon so we will have to confer about that.

8 MR. LOGAN: As I said, we are requesting
9 several days adjournment and some of the other defense
10 counsel may have a word to say on that matter.

11 THE PRESIDENT: Mr. Blewett.

12 MR. BLEWETT: If the Tribunal please, to make
13 our position clear, on behalf of General TOJO we have
14 four documents. These all relate to the evidence which
15 was presented to this Court last Thursday. I think it
16 was Thursday; it was witness Petersdorf.

17 Now, immediately at the conclusion of our
18 cross-examination we went out and got affidavits from
19 four witnesses but they have not yet been processed.
20 They are being processed at the present time. At least
21 we haven't received them, although we have our running
22 offer of proof and everything to go ahead. But there
23 were other counsel who didn't finish up on Wednesday
24 or Thursday and who had to work over the weekend and
25 are now working to get their evidence in order to

1 present.

2 THE PRESIDENT: I understand from the process-
3 ing department they are just waiting for you to bring
4 documents. And if you need transport for witnesses
5 we will see that you get it.

6 MR. BLEWETT: We had the work ready for the
7 processing department, if your Honor please. As a matter
8 of fact, we turned it over to them Friday and they
9 worked all weekend on it. But it would seem that even
10 though we may be ready by noon time that if our evidence
11 is the only evidence that is ready at the present time
12 and the other attorneys haven't had an opportunity of
13 getting theirs ready we should be given a little time
14 in which to all get together and present it at the same
15 time.

16 MR. BLAKENFY: May I add a word, your Honor?

17 THE PRESIDENT: Major Blakeney.

18 MR. BLAKENFY: In my case, I was engaged until
19 noon or a little past on Friday last cross-examining a
20 witness whose testimony introduced what I believe is a new
21 issue which needs refutation. Upon leaving the courtroom
22 I sent for the witnesses I thought necessary. I found
23 that some of them were absent from their homes. I
24 have had the police search for them; I have sent tele-
25 grams to various parts of Japan; and, finally, at seven

o'clock last night I had an appeal broadcast by radio
1 to render themselves here. Yesterday I did interview
2 four other witnesses and I have two now waiting in
3 my office for me. But your Honors must quite appreci-
4 ate that so long as the Tribunal is in session it is
5 a very difficult matter to prepare this evidence in
6 such a short period of time.

7 I, therefore, wish to join in Mr. Logan's
8 suggestion that we be allowed two or three days addi-
9 tional in order to complete this evidence.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 THE PRESIDENT: I appreciate the fact that
2 American counsel must supervise all the material
3 sought to be put in as advocates. In other countries
4 it is different; you can leave the preparation to the
5 office lawyer. But an adjournment or recess of a day
6 or two should be quite enough, Major Blakeney. We
7 were asked for fourteen court days at one stage.

8 MR. BLAKENEY: I never asked I believe, your
9 Honor, for anything more than a reasonable recess al-
10 though I realize a much longer period was mentioned.
11 We, ourselves, had some dispute over that point. At
12 any rate all we are asking now is that very brief per-
13 iod, whatever your Honors may think appropriate, one day
14 or two days or three days.

15 THE PRESIDENT: Mr. Logan suggested one or two
16 days which would appear to be about the maximum. If
17 we have any spare time there is no reason, as far as
18 I can judge, why we should not go on listening to the
19 summations being read because the additional evidence
20 will hardly affect the summations, not to any extent
21 at all events. What is to prevent us from starting
22 on the summations at once?

24 MR. BROOKS: If your Honors please, as to the
25 summations -- I have another matter I wanted to discuss --
but as to the summations, I spent last night until about

one o'clock going over the first few sections, I think
1 up to Section D of the summations has been furnished us
2 up to yesterday afternoon, and found innumerable mis-
3 takes in that summation which I think that a reasonable
4 period of time given to both the prosecution and de-
5 fense to sit down, we could iron out any number of
6 mistakes that are oversights whereas some statement
7 has been made that was changed on cross-examination,
8 and there's those inaccuracies of statements from the
9 record that should be corrected. In relation to the
10 prosecution 001 I know on approaching the prosecution on
11 a number of points, various defense counsel presenting
12 what they said was the correct statement from the record,
13 and the prosecution very courteously acknowledged their
14 mistakes and made those changes, many of which were ma-
15 terial.
16

17 THE PRESIDENT: Well, we don't want to hear
18 our little matters discussed in court.

19 MR. BROOKS: I think it would go for orderly
20 procedure to go through that summation uninterrupted,
21 and I believe it would conserve a lot of time if these
22 small mistakes were pointed out to the prosecution in
23 advance and they made those corrections.
24

25 THE PRESIDENT: Point them out as you go along.

MR. BROOKS: As to the cross-examination, if

your Honors care to hear that at this time, of Mrs.

1 KONOYE --

2 THE PRESIDENT: Well, is there any objection
3 to taking that now? We are here to do the business of
4 the Court and that is part of it, perhaps.

5 MR. BROOKS: I wish to make a statement on
6 that, if your Honors please. After going over and
7 studying the documents with Mrs. KONOYE and also with
8 Mr. SATOMI, over these documents, and having studied
9 the record and the affidavit and comparing it with the
10 statements that they have made to us counsel outside of
11 court, I wish to submit that exhibit No. 3750, which
12 is the first affidavit of Mrs. KONOYE, in paragraph 3
13 it is apparent that her statement now under our examina-
14 tion is the same as made in that paragraph. And it is
15 clear when she was handed the document that the "photo-
16 static copy of this," note the word "'finished' trans-
17 cription which I recognize as the memoirs of Baron
18 HAKADA written by me in my own handwriting," was shown
19 to her.
20

21 THE MONITOR: Mr. Brooks, could you recite the
22 quotation marks?
23

24 MR. BROOKS: "A photostatic copy of this"
25 quote "finished transcription which I recognize as the
memoirs of Baron HAKADA written by me in my own

handwriting" was shown to the prosecutor. It is in
1 paragraph 3 of exhibit 3750.

2 THE MONITOR: Are the words "shown to the
3 prosecutor" a part of the quotation or outside?

4 THE PRESIDENT: Captain Brooks, do you want
5 to examine Mrs. KONOYE further or do you not?

6 MR. BROOKS: I am pointing out a submission
7 to the Court why my cross-examination is not necessary
8 if this is carefully read, and in lieu of cross-
9 examination --

10 THE PRESIDENT: That is what we thought, and
11 we don't know why you are taking up all this time. You
12 seem to paralyze the IBM.

13 MR. BROOKS: Now, the prosecutor has just
14 informed me that this first affidavit as offered by
15 her is not correct, and that is what I want to point
16 out. I saw that it is correct, and my examination out-
17 side of this courtroom has definitely shown it is cor-
18 rect. And I am relying on her own first affidavit.

19

20

21

22

23

24

25

D
u
c
a
S
e
r
a
t
t

1 MR. COMYNS CARR: Your Honor, I don't under-
2 stand what my friend is doing at all. If he reads the
3 paragraph to which he is referring as meaning that
4 the document which we have produced is the document
5 with the SAIONJI note on it, in his own handwriting,
6 then it is a mistake, because he has seen and we have
7 all seen that it has SAIONJI's notes on it in his own
8 handwriting. In any case he either wants to cross-
9 examine her or he doesn't, and anything else he wants
10 to say is a matter for summation and not to be inter-
11 posed at this stage.

12 MR. BROOKS: I could call the witness for
13 cross-examination, if your Honors please, and ask her
14 if her first affidavit -- these statements, if she
15 didn't make them, but to save time I am submitting,
16 as the prosecution has done before, that in lieu of
17 cross-examination I call the Court's attention to
18 certain matters and evidence which is already in
19 evidence upon which we rely. Therefore, if your
20 Honors please, I wish to submit that in exhibit 3750
21 that if the last four paragraphs are read it is clear
22 that this refers to the volumes marked as "B" as
23 being the documents from which the photostats were
24 made and impeaches the witness's late testimony.
25 This exhibit is found at court record page 37,462,

D
u
c
a
S
e
r
a
t
t

1 MR. COMYNS CARR: Your Honor, I don't under-
2 stand what my friend is doing at all. If he reads the
3 paragraph to which he is referring as meaning that
4 the document which we have produced is the document
5 with the SAIONJI note on it, in his own handwriting,
6 then it is a mistake, because he has seen and we have
7 all seen that it has SAIONJI's notes on it in his own
8 handwriting. In any case he either wants to cross-
9 examine her or he doesn't, and anything else he wants
10 to say is a matter for summation and not to be inter-
11 posed at this stage.

12 MR. BROOKS: I could call the witness for
13 cross-examination, if your Honors please, and ask her
14 if her first affidavit -- these statements, if she
15 didn't make them, but to save time I am submitting,
16 as the prosecution has done before, that in lieu of
17 cross-examination I call the Court's attention to
18 certain matters and evidence which is already in
19 evidence upon which we rely. Therefore, if your
20 Honors please, I wish to submit that in exhibit 3750
21 that if the last four paragraphs are read it is clear
22 that this refers to the volumes marked as "B" as
23 being the documents from which the photostats were
24 made and impeaches the witness's later testimony.
25 This exhibit is found at court record page 37,462,

1 if your Honors please, and we will not cross-examine
2 the witness.

3 THE PRESIDENT: Mr. Tavenner.

4 MR. TAVENNER: If the Tribunal please, in
5 regard to the question broached by Mr. Brooks of
6 going over with the prosecution in some form the
7 summation, our position is that is the prosecution's
8 argument. The prosecution cannot undertake to go
9 into matters of that kind with one counsel who is
10 putting one interpretation on it and probably the next
11 counsel will put a different interpretation.

12 THE PRESIDENT: We have not invited you to
13 do so, nor do we expect you to do so. Let them give
14 their answer in the summation. But could we have
15 the summations read before all this evidence is pre-
16 sented? I know that an orderly presentation of the
17 case is necessary to prevent confusion in the minds
18 of the Judges, but have we reached the stage now when
19 confusion is not likely to take place because the
20 summations are read before a little bit of evidence
21 is given about individual accused?

22 Mr. Chief of Counsel.
23
24
25

1 MR. KEENAN: Mr. President, the prosecution
2 has, and is more than pleased to, comply with any
3 not alone order, but request, from the Court and to
4 cooperate fully in these difficult proceedings.

5 We had only one objection registered in
6 chambers, Mr. President, to giving copies of our sum-
7 mation beforehand to the accused. That objection was
8 that it would stir up the imagination of defense
9 counsel if the summation were provided before the com-
10 pletion of the taking of the testimony.

11 This Court has patiently listened to one of
12 the most unusual requests, I take it, ever made of a
13 court in history: that they be given an opportunity
14 to correct alleged errors in the carefully-prepared
15 summation, even though the summation was lodged with
16 them before the completion of the taking of the testi-
17 mony, their own testimony.

18 Now, Mr. President, we are asked to begin
19 our summation that is designed to assist this Court
20 in its deliberations, in the performance of its very
21 important duty, before the evidence in the case is
22 terminated. If we knew that there was a limit of time,
23 or if we had any assurance -- and, of course, we are
24 not referring to this honorable Tribunal -- of the
25 length of time that this case would drag out if we began

1 such unorthodox -- and with great respect, we feel may
2 prove to be unsound -- procedure, we would be inviting
3 from defense counsel much more difficulty than we
4 encounter this particular moment.

5 I am sure, Mr. President, that the suggestion
6 to begin the summation came from the Court's earnest
7 desire to comply with the spirit of the Charter and
8 avoid all unnecessary delay.

9 THE PRESIDENT: The position is this, Mr.
10 Chief of Counsel, as I see it: You have seen fit to
11 supply the defense with copies of your summation in
12 advance. They already know what you are going to say,
13 to a large extent. They have read it, no doubt. My
14 suggestion is that we now proceed to get over the
15 mechanical part of reading it in court.

16 The imaginations of the defense have already
17 been stirred by reading it; it is not likely to be
18 further stirred by listening to it being read in court.
19 Probably most of them will be away while the reading is
20 taking place.

21 MR. KEENAN: Mr. President, I think that the
22 Court's remarks are very apt, and they strike me as
23 containing the maximum of common sense, and would be
24 excellent reason for avoiding reading the entire sum-
25 mation and ledging it with the Clerk and saving a

considerable amount of time for a useless gesture.

1 THE PRESIDENT: If the Charter permitted that
2 course, personally, I would prefer it. But does the
3 Charter permit of it? We must observe the Charter.

4 MR. KEENAN: I think, Mr. President, we have
5 gotten away from the point. But before we do, I would
6 like to make this observation, that we lodged this
7 copy of the summation beforehand with the defense
8 counsel, as I honestly believe, at the suggestion,
9 and I think the earnest one, of the Members of the
10 Court who met with us in chambers, for the purpose of
11 avoiding delays.
12

13 And while we are on the subject, Mr. President,
14 the Charter, perhaps very wisely, permitted that the
15 defense should proceed first with its summation, and
16 that is not being observed.

17 But, Mr. President, we are in the hands of
18 the Court and we are willing servants of the Court and
19 entirely willing, as graciously as we know how, to
20 comply with any request it makes to do anything it
21 believes will serve the ends of justice in this case.
22 But we do suggest that before we are directed to pro-
23 ceed with the summation under these circumstances, ¹
24 there be riveted very tightly any subsequent proceed-
25 ing by way of the giving of further evidence. We

1 think it is a grave mistake -- if we were permitted
2 to express our views, we would say we hope fervently
3 that the Court would make no such order, and unless
4 it did, we certainly would not voluntarily adopt any
5 such procedure.

6 THE PRESIDENT: We will recess for fifteen
7 minutes.

8 (Whereupon, at 1055, a recess was
9 taken until 1120, after which the proceed-
10 ings were resumed as follows:

11 MARSHAL OF THE COURT: The International
12 Military Tribunal for the Far East is now resumed.

13 THE MONITOR: Mr. President, we will translate
14 the untranslated portion of Mr. Keenan's statement.

15 THE PRESIDENT: By a majority, the Tribunal
16 has decided to grant a recess until Monday next to
17 enable the defense to prepare the balance of their
18 reply. There will be no further recess for that
19 purpose.

20 Does any counsel desire to make any observa-
21 tion?

22 We will adjourn until Monday next at nine-
23 thirty.

24 (Whereupon, at 1125, an adjournment
25 was taken until Monday, 9 February 1948, at 0930.)